

PRESIDENT'S SECRETARIAT (PUBLIC)  
AIWAN-E-SADR, ISLAMABAD

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Federal Board of Revenue  
Versus  
M/s Ideal Fashion Industries, Karachi

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST FINDINGS  
/ RECOMMENDATIONS DATED 23.04.2018 PASSED BY THE FTO IN COMPLAINT NO.  
0392/KHI/ST/2018**

I am directed to refer to your representation No. 1(392)S(TO-II)/2018, dated 24.05.2018 on the above subject and to say that **the President has been pleased to pass the following order:**

2. This Representation dated 24.05.2018 has been filed by the FBR-Agency against the findings of the FTO dated 23.04.2018, whereby it has been held:

"FBR to:

- i. **The Commissioner-IR, Zone-VI, Corporate RTO, Karachi to either pay or settle pending 10 fresh and 14 deferred claims discussed supra expeditiously, as per law; and**
- ii. **Report compliance within 45 days".**

3. Brief facts of the case are that the complaint has been filed against the Commissioner-IR, Zone-VI, Corporate RTO, Karachi (the department) in terms of Section 10(1) of the FTO Ordinance, 2000 for failing to process ten fresh sales tax refund claims of Rs. 5.586 million and fourteen deferred claims of Rs. 1.573 million filed by the complainant for various tax periods from April 2016 to August 2017 and from April 2013 to March 2017 respectively.

4. The complaint was referred to the Secretary, Revenue Division for comments in terms of Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsman Institutional Reforms Act, 2013. The Chief Commissioner-IR, Corporate RTO, Karachi forwarded parawise comments submitted by Commissioner-IR, Zone-VI, Corporate RTO, Karachi vide letter dated 28.03.2018. At the outset preliminary objection was raised regarding admissibility of complaint under Section 10(3) of the FTO Ordinance in respect of six fresh claims filed during the period 06.09.2016 to 04.04.2017. It has been contended that due to changes in jurisdiction of the complainant, the refund claims could not be processed and settled. It was informed that all the claims are appearing in the folder of the Processing Officer but physical files have been requisitioned from Information Processing Division and Taxpayer Facilitation Desk (TFD) Branch. The claims would be processed expeditiously upon receipt of physical files of pending claims. Further, it was informed that pending deferred claims would also be settled expeditiously.

5. The complainant, as manufacturer of textile goods, is registered with the department under the Sales tax Act, 1990 (the Act). During hearing, the AR averred that ten fresh claims and 14 deferred claims are pending with the department despite request vide letters dated 09.11.2017, 21.11.2017, 30.01.2018 and 27.02.2018. The Authorized Representative (AR) averred that the claims files have been submitted to the department and provided copies of acknowledgment slips to the DR. The AR further averred that the complainant was continuously pursuing the matter but no action was taken by the department. The preliminary objection raised in terms of Section 10(3) of the FTO Ordinance is *ipso facto* misconceived as after filing of the claims, the complainant has repeatedly approached the department but failed to get any response. Moreover, the department in parawise comment has conceded that refund claims could not be processed due to frequent transfer of the complainant's jurisdiction. Thus on one hand the department has alleged inaction and delay on transfer of jurisdiction, which obviously is not the complainant's doing, and on the other hand tried to deny his legitimate right on the point of limitation. Hence, preliminary objection raised in terms of Section 10(3) of the Ordinance being frivolous is overruled. During the hearing, the Departmental Representative (DR) undertook to process and settle the pending claims upon receipt of physical claims files expeditiously, as per law. Thus, FTO has issued aforementioned findings.

6. The instant representation has been filed by the Agency. The Agency has taken ground that the order of FTO is bad on facts as well as law. FTO has violated Section 10(3) by entertaining application of claims beyond six months. FTO cannot entertain application after lapse of six months on the ground that Registered Person has approached department but failed to get response. FTO cannot hold the department responsible for omissions or legal violation on part of Registered Person due to which claims are rejected or deferred during ERS processing.

7. The Agency has underscored that filing of application with department for processing of refund does not grant suo-moto condonation of Registered Person to lodge complaint after six months. Order of FTO to process claims within forty five days violates the principle of first come first serve. FTO has ignored the contention of department that Registered Person's request for refund claim for the month of August 2017 is appearing at serial number 1350 and early processing will cause prejudice to 1349 refund claims before him. Order of FTO amounts to jumping of queue. Multiple order from FTO for processing within forty five days create confusion in order of processing of refund claims.

8. The Agency has asserted that entertaining complaint of Registered Person by FTO after limitation is against the judgment of Supreme Court of Pakistan in following reported cases:

- (i) 2013 SCMR 587
- (ii) PLD 2015 SC 2012
- (iii) PLD 1997 SC 397

Recommendations of FTO are in contravention of decision of President in case of FBR Vs M/s H.S.M Packages (Pvt) Ltd in FTO Complaint No.738/KHI/ST/2016.

9. The Agency has prayed that President may vacate findings/ recommendations dated 23.04.2018 in C.No. 128/KHI/ST/2018 and pass order to:

- a) FTO has acted beyond powers to entertain time barred complaint;
- b) Refund claims may be process on first come first serve basis.

10. On the other hand, the Complainant has filed his written comments on 12.6.2018 against the instant representation of FBR and supported the impugned recommendations/findings of learned FTO.

11. After perusal of record and examination of all documents, it has been noted that it is as clear as the crystal that FTO has made recommendations which are only to the extent to the Commissioner-IR, Zone-VI, Corporate RTO, Karachi to either pay or settle pending 10 fresh and 14 deferred claims expeditiously, as per law within 45 days. It is just a harmless order and only the Agency has to decide the issue as per law which was never denied in its written reply even by the Agency. The Agency has full powers to decide the issue either way, on merits and in accordance with the provisions of law. Thus the findings of the learned FTO are quite sustainable and the Agency has unnecessarily filed this representation. In such circumstances, this representation is liable to be rejected having no merits and the recommendations/findings of FTO are sustainable and maintainable being unexceptional in nature.

16. This representation has been filed by Agency repeating the contents of the pleadings already made before the learned FTO. Nothing turns on the same as it fails to answer the reasoning of learned FTO and not even contain denial of the factual observations for his impugned decision. No grounds stand made out for interference with the decision of the FTO. Undoubtedly FTO's decision is based on sound reasoning and supported by the law. Thus, the representation is devoid of any merits and is liable to be rejected. FTO impugned findings/recommendations do not warrant any interference. Consequently FTO findings are sustainable and unexceptional having no illegality or improbability.

12. Accordingly, the President has been pleased to reject the instant representation of FBR-Agency and the impugned recommendations/findings of FTO are upheld.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

The Chairman,  
Federal Board of Revenue,  
Islamabad.

No. 28/FTO/2018 dated 19.07.2018

Copy for information to:

1. M/s Ideal Fashion Industries, C-2/A, SITE, Karachi.
2. The Registrar, Federal Tax Ombudsman, Secretariat, Islamabad.
3. ✓ The Chief (Legal-I), Federal Board of Revenue, Islamabad.
4. Director to Secretary to the President.
5. Master file.

(Zulfiqar Hussain Awan)  
Director General (Legal Affairs)

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